07/30/1996

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

CRYSTAL OIL COMPANY, AND CRYSTAL EXPLORATION AND PRODUCTION COMPANY,	§	**Civil Action No. CV 95-2115S**
Plaintiffs	§	**JUDGE TOM STAGG**
v.	§	**MAGISTRATE JUDGE PAYNE**
ATLANTIC RICHFIELD COMPANY,	§	
Defendant	§	

CRYSTAL EXPLORATION AND PRODUCTION COMPANY'S
MOTION FOR SUMMARY JUDGMENT

NOW INTO COURT, through undersigned counsel, comes plaintiff Crystal Exploration and Production Company, and files this motion for summary judgment against Atlantic Richfield Company ("ARCO"), and in support thereof would show as follows:

1.

In 1995 ARCO notified Crystal Exploration and Production Company ("CEPCO") that it intended to seek recovery of environmental cleanup costs at the Rico-Argentine mine (the "Rico mine") in Dolores County, Colorado. The mine was formerly owned by CEPCO. ARCO maintains that CEPCO is liable under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* (1994) ("CERCLA") for cleanup activities even though CEPCO was absolved from all future liability as to the mine (except for one $30,000 matter) when ARCO's predecessor, The Anaconda Company ("Anaconda"), contracted with CEPCO to acquire the mine from CEPCO.

M

2.

By this motion, CEPCO asks this Court to render judgment declaring that the unambiguous contract between Anaconda and CEPCO expressly allocated environmental liabilities at the Rico mine, including environmental liabilities under CERCLA, to ARCO.

3.

The August 27, 1980 Closing Agreement between CEPCO and Anaconda expressly addresses the allocation of environmental responsibilities relating to the former mining operations contractually absolving CEPCO from all such obligations and responsibilities with one limited exception—certain alleged water permit violations which appeared virtually certain at the time of closing to result in penalties and enforcement actions after closing. Even here, however, ARCO and CEPCO agreed that CEPCO would only be responsible for pre-closing violations up to a maximum of $30,000. Otherwise, ARCO would be "solely and fully responsible for all compliance requirements imposed, in response to permit violations which occur either before or after August 27, 1980, by either the Colorado Department of Health or EPA." Additionally, the Closing Agreement states that "in no event shall Crystal be liable for or subject to, either directly or indirectly, any compliance costs or requirements." Finally, ARCO and CEPCO expressly agreed in unmistakable terms that CEPCO would have no post-closing responsibility for the Rico property.

4.

CEPCO believes that the Closing Agreement is clear and unambiguous and that extrinsic evidence therefore should not be considered. However, if extrinsic evidence is considered, it only confirms that ARCO agreed to assume the environmental liabilities for which it now seeks reimbursement from CEPCO. ARCO's documentation authorizing purchase of the Rico mine

conclusively demonstrates that ARCO intended to assume liability for all environmental claims and remediation, including the environmental claims it now asserts against CEPCO. Therefore, there is no genuine issue to be tried—and CEPCO is entitled to summary judgment.

5.

As summary judgment proof, CEPCO offers the documents entitled Appendix to Crystal Exploration and Production Company's Motion for Summary Judgment[1/] and Memorandum in Support of Crystal Exploration and Production Company's Motion for Summary Judgment, both filed concurrently herewith.

WHEREFORE, Crystal Exploration and Production Company respectfully requests that this Court grant its motion, and render judgment declaring that ARCO assumed environmental liabilities associated with the Rico mining property under its contract with CEPCO, and that ARCO take nothing by way of its counterclaim against CEPCO.

[1/] In the Stipulation at Tab 20 of the Appendix, ARCO has stipulated as to the authenticity of the documents located at Tabs 1 through 15. Crystal requests that this Court take judicial notice of the documents located at Tabs 16 through 20, which are pleadings that have been filed with the Western District of Louisiana, Shreveport Division or discovery taken pursuant to this lawsuit.

FULBRIGHT & JAWORSKI L.L.P.

By: Albert M. Hand for Osborne J. Dykes III, with permission
Osborne J. Dykes, III, T.A.
Texas State Bar No. 06325500
Zack A. Clement
Texas State Bar No. 04361550
Eva M. Fromm
Texas State Bar No. 07486750
Rebecca J. Cole
Texas State Bar No. 04546400
Edward Clark Lewis
Texas State Bar No. 00786058
1301 McKinney, Suite 5100
Houston, Texas 77010-3095
Telephone: (713) 651-5151
Telecopy: (713) 651-5246

COOK, YANCEY, KING & GALLOWAY
A Professional Law Corporation

By: Albert M. Hand
Albert M. Hand, Jr.
Louisiana State Bar No. 6497
James R. Jeter
Louisiana State Bar No. 7260
Bernard S. Johnson
Louisiana State Bar No. 7280
1700 Commercial National Tower
333 Texas Street, P. O. Box 22260
Shreveport, Louisiana 71120-2260
Telephone: (318) 221-6277
Telecopy: (318) 227-7850

ATTORNEYS FOR PLAINTIFFS, CRYSTAL OIL COMPANY AND CRYSTAL EXPLORATION AND PRODUCTION COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that in compliance with the Federal Rules of Civil Procedure, on this 30th day of July, 1996, a copy of the above and foregoing has been served on counsel for Defendant, Atlantic Richfield Company, by placing a copy of same in the United States mail, properly addressed and with adequate postage affixed thereon to:

1. M. W. Michael Adams
   Blanchard, Walker, O'Quin & Roberts
   P. O. Box 1126
   Shreveport, Louisiana 71163-1126

2. Mr. Roger L. Freeman
   Davis Graham & Stubbs, L.L.C.
   370 Seventeenth Street, Suite 4700
   Denver, Colorado 80202

3. Mr. Lary D. Milner
   Senior Counsel, ARCO
   Legal Department
   555 Seventh Street
   Denver, Colorado 80202

Albert M. Hand, Jr.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

CRYSTAL OIL COMPANY, AND CRYSTAL EXPLORATION AND PRODUCTION COMPANY,	§	Civil Action No. CV 95-2115S
Plaintiffs	§	JUDGE TOM STAGG
v.	§	MAGISTRATE JUDGE PAYNE
ATLANTIC RICHFIELD COMPANY,	§	
Defendant	§	

MEMORANDUM IN SUPPORT OF CRYSTAL EXPLORATION AND PRODUCTION COMPANY'S MOTION FOR SUMMARY JUDGMENT

FULBRIGHT & JAWORSKI L.L.P.

Osborne J. Dykes, III, T.A.
Texas State Bar No. 0632550
Zack A. Clement
Texas State Bar No. 04361550
Eva M. Fromm
Texas State Bar No. 07486750
Rebecca J. Cole
Texas State Bar No. 04546400
Edward Clark Lewis
Texas State Bar No. 00786058

1301 McKinney, Suite 5100
Houston, Texas 77010-3095
Telephone: (713) 651-5151
Telecopy: (713) 651-5246

COOK, YANCEY, KING & GALLOWAY
A Professional Law Corporation

Albert M. Hand, Jr.
Louisiana State Bar No. 6497
James R. Jeter
Louisiana State Bar No. 7260
Bernard S. Johnson
Louisiana State Bar No. 7280

1700 Commercial National Tower
P. O. Box 22260
Shreveport, Louisiana 71120-2260
Telephone: (318) 221-6277
Telecopy: (318) 227-7850

Table of Authorities

Statutes and Rules

Cases

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

CRYSTAL OIL COMPANY, AND CRYSTAL EXPLORATION AND PRODUCTION COMPANY,	§	Civil Action No. CV 95-2115S
Plaintiffs	§	JUDGE TOM STAGG
v.	§	MAGISTRATE JUDGE PAYNE
ATLANTIC RICHFIELD COMPANY,	§	
Defendant	§	

MEMORANDUM IN SUPPORT OF CRYSTAL EXPLORATION AND PRODUCTION COMPANY'S MOTION FOR SUMMARY JUDGMENT

Crystal Exploration and Production Company files this memorandum in support of its motion for summary judgment.

INTRODUCTION

In 1995, defendant, Atlantic Richfield Company ("ARCO"), notified Crystal Oil Company ("Crystal") and Crystal Exploration and Production Company ("CEPCO") that it intended to seek recovery of environmental cleanup costs at the Rico-Argentine mine (the "Rico mine") in Dolores County, Colorado (the "ARCO Environmental Claim"). The mine was formerly owned by CEPCO, a wholly owned subsidiary of Crystal. ARCO maintains that Crystal and CEPCO are liable under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* (1994) ("CERCLA") for cleanup activities even though any such claim against Crystal is barred by Crystal's 1986 discharge in bankruptcy (the "Bankruptcy Discharge Issue") and any such claim against CEPCO was released when ARCO's

predecessor, The Anaconda Company ("Anaconda"), contracted with CEPCO to assume responsibility for environmental cleanup costs relating to the property.

On November 30, 1995, Crystal and CEPCO filed suit in this Court asking for a declaration that they have no liability to ARCO for remediation of the mine. On March 6, 1996 ARCO counterclaimed, asserting claims against plaintiffs under CERCLA. On July 19, 1996, this Court referred the Bankruptcy Discharge Issue to the Bankruptcy Court. *See* July 19, 1996 Memorandum Ruling, Appendix, Tab 18.

By this motion, CEPCO asks this Court to render judgment declaring that ARCO assumed environmental liabilities associated with the Rico mining property under its contract with CEPCO and that ARCO take nothing by way of its counterclaim against CEPCO.[1/]

UNDISPUTED FACTS

History Of Ownership Of The Rico Mine. Beginning in the early 1900s, a Utah corporation named Rico-Argentine Mining Company conducted mining operations in and near Rico, Colorado. 1996 Voluntary Cleanup Plan Application for the Argentine Tailings Site at 2-2, Appendix, Tab 15. CEPCO, a wholly-owned subsidiary of Crystal, became the owner of the Rico mine in 1977 through a series of corporate mergers. Crystal itself never owned the mine. CEPCO owned the mine for approximately three years.

In June 1978, Anaconda, a wholly-owned subsidiary of ARCO, entered into an option agreement with CEPCO to explore and possibly purchase the Rico mine. *See* June 1, 1978 Agreement and Amendment No. 1 thereto (the "Option Agreement"), Appendix, Tab 1.

[1/]Concurrently with this motion, Crystal has filed a motion for summary judgment in the Bankruptcy Court, asking that the Bankruptcy Court find that ARCO's claims against Crystal were discharged in bankruptcy and that ARCO be enjoined from pursuing same.

Anaconda bought the mine on August 27, 1980, through a letter agreement and a Closing Agreement, both signed that summer. *See* June 17, 1980 letter agreement and August 27, 1980 Closing Agreement, Appendix, Tabs 7 and 10.[2/] *See also* ARCO's Responses to Request for Admissions at No. 1, Appendix, Tab 19. Anaconda later merged into ARCO and all references hereafter are therefore to ARCO, which includes its predecessors and successors. ARCO's Responses to Request for Admissions at No. 2, Appendix, Tab 19.

The Parties' Agreement Concerning Responsibility For Post-Closing Cleanup Liability. The Closing Agreement expressly addressed the allocation of environmental responsibilities relating to the former mining operations in clear and unambiguous language, contractually absolving CEPCO from all such obligations and responsibilities with one limited exception -- certain alleged water permit violations which appeared virtually certain at the time of the closing to result in penalties and enforcement actions after closing. Even here, however, ARCO and CEPCO agreed that CEPCO would be responsible only for pre-closing violations up to a maximum of $30,000.00. Closing Agreement at ¶ 3, Appendix, Tab B. Otherwise, ARCO would be "solely and fully responsible for all compliance requirements imposed, in response to permit violations which occur either before or after August 27, 1980, by either the Colorado Department of Health or EPA." *Id.* Additionally, the Closing Agreement stated that "In no event shall Crystal be liable for or subject to, either directly or indirectly, any such compliance costs or requirements." *Id.* Finally, ARCO and CEPCO agreed that CEPCO would have no

---

2/ On the same day, the parties also executed a Quitclaim Deed and a Mining Deed, Appendix, Tabs 11 and 12. Also on the same day, the Option Agreement was terminated by an Acknowledgement of Termination in conjunction with such purchase on August 27, 1980. *See* August 27, 1980 Acknowledgement of Termination, Appendix, Tab 13.

other post-closing responsibility for the Rico property: "Crystal shall not be subject to any further obligations or responsibilities with respect to the property involved in this transaction subsequent to closing. . . ." *Id.* at ¶ 12.

During its negotiations with CEPCO to purchase the Rico mine, ARCO extensively documented its intention to assume environmental liability, internally estimating at the time of purchase that assumption of post-closing cleanup liability would most likely cost ARCO in excess of $15 million. *See, e.g.*, Authorization for Expenditure and Summary of Justification, Appendix, Tab 8. ARCO negotiated to purchase the Rico mine from CEPCO for just $4.5 million. Indeed, when ARCO agreed to a $4.5 million purchase price for the Rico mine, it took into account as part of its costs of purchase a $15.4 million cost estimate for environmental rehabilitation. Justification, Authorization for Commitment, Rico Project, Colorado at p. 9, Appendix, Tab 9. The environmental liabilities addressed in ARCO's 1980 pre-purchase analysis, for which it intended to assume liability, are the same liabilities addressed in ARCO's 1996 Voluntary Cleanup Plan Application, which ARCO now asks CEPCO to help pay for in 1996. *See infra* at Section II.

I. THE UNAMBIGUOUS CONTRACT BETWEEN ARCO AND CEPCO EXPRESSLY STATES THAT ARCO ASSUMES ENVIRONMENTAL LIABILITIES AT THE RICO MINE.

The Closing Agreement, by and between CEPCO and ARCO, expressed the parties' intent that ARCO would assume environmental liabilities that arose before or after the sale in clear and unambiguous language. Therefore, the contract must be enforced according to its express terms, without reference to parol evidence. [*Pepcol Mfg. v. Denver Union Corp.*, 687 P.2d 1310, 1324 (Colo. 1984).] Specifically, the contract states that ARCO assumed full

responsibility for all water permit penalties, enforcement actions, and other costs, including post closing cleanup:

> Anaconda shall be solely and fully responsible for any and all compliance requirements imposed, in response to permit violations which occur either before or after August 27, 1980, by either the Colorado Department of Health or EPA, including, without limitation, clean-up orders or the installation of pollution control facilities, devices, plans, or programs. In no event shall Crystal be liable for or subject to, either direct or indirectly, any such compliance costs or requirements.

Closing Agreement at ¶ 3(c), Appendix, Tab B (emphasis added). Most importantly, ARCO and CEPCO expressly agreed that CEPCO would have no post-closing responsibility, other than those responsibilities specified in the agreement:

> Crystal shall not be subject to any further obligations or responsibilities with respect to the properties involved in this transaction subsequent to closing, except as otherwise specified in this Closing Agreement.

Id. at ¶ 12(d), Appendix, Tab B. The parties "specified" just one exception to ARCO's assumption of environmental liabilities in the Closing Agreement. The parties being aware of certain water permit violations, agreed that CEPCO would be responsible only for pre-closing violations up to a maximum of $30,000.00. *Id.* at ¶ 3(a), Appendix, Tab B.

ARCO, a sophisticated purchaser, was well aware of what it bargained for when it negotiated a purchase price of just $4.5 million. It knew that it would be "solely and fully responsible" for all other environmental liabilities. Prior to purchase of the site, ARCO estimated these liabilities in excess of $15 million. Authorization For Expenditure and Summary of Justification, Appendix, Tab 8. The broadly worded contractual assumption of environmental liability not only affected the selling price of the property, but was a key to it in light of the expected value of the property for future mining. Authorization For Expenditure and Summary

of Justification, Appendix, Tab 8 (ARCO estimated the present value of the prospective molybdenum tungsten mine to be $130 million). CEPCO relied on the contract terms in negotiating the sale price and asks this Court to enforce the parties' agreement according to its clear and unambiguous terms.

CERCLA expressly permits private parties to contractually allocate liability under the Act. 42 U.S.C. § 9607(e)(1) (1994) ("nothing in the subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such an agreement or any liability under this section"); *Keywell Corp. v. Weinstein*, 33 F.3d 159, 165 (2nd Cir. 1994); *Olin Corp. v. Consolidated Aluminum Corp.*, 5 F.3d 10, 13 (2nd Cir. 1993). Agreements entered into prior to CERCLA may nonetheless allocate CERCLA liability. *Olin Corp.*, 5 F.3d at 13; *see also Hatco Corp. v. W. R. Grace & Co.*, 59 F.3d 400, 409-10 (3rd Cir. 1995) (broad assumption of environmental liability predating CERCLA was effective for post-CERCLA claims, and it was of no practical importance whether the buyer's obligation to clean up the site was imposed by CERCLA, other federal statute, common law, or state statute); *Joslyn Mfg. Co., v. Koppers Co.*, 40 F.3d 750, 754-55 (5th Cir. 1994) (indemnification agreement and property leases were intended to cover liability under CERCLA and the Louisiana Environmental Quality Act, even though environmental liability under those statutes was not specifically contemplated at the time of contracting; broad language of indemnification agreements evidenced the intent by the lessee to indemnify lessor for all liability in connection with the land); *Armotek Industries, Inc. v. Freedman*, 790 F. Supp. 383 (D. Conn. 1992) (the test is not whether parties specifically referred to CERCLA in an agreement, but rather whether the agreement conveys the intention of the parties to allocate CERCLA-type environmental liability); *Village of Fox River Grove v.*

Grayhill, 806 F. Supp. 785 (N.D. Ill. 1992) (release agreement that pre-dated CERCLA, but was broad enough to encompass any and all claims, and which referred to environmental liability, covered CERCLA liability).

The Closing Agreement between ARCO and CEPCO contains broad language evidencing the parties clear intent to allocate environmental liabilities. For example, environmental liabilities were expressly addressed--CEPCO agreed to assume liability up to $30,000 for any civil or criminal penalties assessed in connection with certain NPDES permit violations. Closing Agreement at p.3, ¶ 3(a), Appendix, Tab B (". . .in no event shall [CEPCO's] liability for the [NPDES] penalties or any other costs exceed thirty thousand dollars ($30,000.00). If for any reason, the penalties and costs imposed as a result of such [NPDES] violations exceed thirty thousand dollars, Anaconda shall be liable for such excess"). Other than the penalties associated with the NPDES permit violations, the parties agreed that Anaconda would be "solely and fully responsible" for environmental liabilities. *Id.* at ¶ 3(c). The parties also included broad contractual assumption of liability language that CEPCO would not be subject to "any obligations or responsibilities with respect to the properties involved in the transaction," other than those specified above. *Id.* at ¶ 12.

Based on the clear and unambiguous language in the Closing Agreement, this Court should enforce the contract according to its express terms, and grant summary judgment in favor of CEPCO.

II. ARCO INTENDED TO CONTRACTUALLY ASSUME LIABILITY FOR ENVIRONMENTAL LIABILITIES AT THE RICO MINE.

CEPCO believes that the Closing Agreement is clear and unambiguous and that extrinsic evidence therefore should not be considered. However, if extrinsic evidence is considered it

only confirms that ARCO agreed to assume the environmental liabilities for which it now seeks reimbursement from CEPCO. A review of ARCO's history with the Rico mine and its documentation authorizing purchase of the Rico mine conclusively demonstrate that ARCO intended to assume liability for the ARCO Environmental Claim.

Almost two years before ARCO purchased the Rico mine, ARCO personnel had "severe concerns about environmental contamination at Rico." February 21, 1979, Anaconda Interoffice Memorandum; Appendix, Tab 3; *see also* December 1, 1978 Anaconda Interoffice Memorandum, Appendix, Tab 2 ("I believe we should have an environmental assessment performed at Rico. This would give related management some idea of the environmentally related costs involved if we decide to purchase the property"). In June of 1979, during which time Anaconda was conducting an exploration effort at the Rico mine in anticipation of purchasing the Rico mine, the Manager of Environmental Engineering at Anaconda sent a "request for proposal" to three liability assessment bidders which stated as follows: "We are interested in determining the environmental liability which would be assumed by Anaconda Copper Company should it acquire control of the property." June 13, 1979 letter, Appendix, Tab 4 (emphasis added). ARCO retained Camp Dresser & McKee, Inc. ("CDM"), the successful bidder, to evaluate the environmental liabilities associated with acquiring the Rico mine. In September 1979, CDM delivered to ARCO a Report on Environmental Liability Assessment of Rico-Argentine Mining Company -- Rico, Colorado ("the CDM Report"), Appendix, Tab 5.

ARCO accepted and "strongly endorsed" CDM's assessment of environmental liabilities in its Authorization for Expenditure documentation and based on the CDM Report, ARCO set

aside $15,400,000 in capital funds to cover "environmental assessment of liabilities and repair" at the Rico mine when ARCO purchased the site in 1980, expressly recognizing that "Purchase of the Rico property involves assumption of environmental liabilities as well as substantial surface and mineral assets." Authorization for Expenditure and Summary of Justification, Appendix, Tab 8, signed by eight members of ARCO management, including the president of the company (emphasis added). *See also* Excerpts from the deposition of ARCO's corporate representative, Douglas V. Johnson, ("Corporate depo") Vol. 2, pp. 164-167, Appendix, Tab 17. ("I think that [assessment and evaluation of environmental liabilities] was the point of the study that was asked for by Camp Dresser & McKee in 1979," and that report, which was "strongly endorsed" by ARCO, identified environmental problems including the St. Louis Tunnel area and the Argentine Tailings Site, the areas addressed by ARCO's current cleanup plan). Based on the CDM Report, ARCO concluded that the "environmental liabilities at Rico have not been overstated by the CDM Report and the recommended control actions will require about $16,000,000 in costs over the initial years of Anaconda ownership . . . ." Anaconda will assume responsibility for all the liabilities [listed] if we purchase . . ." Justification, Authorization for Commitment, at Appendix III, p. 3., Appendix, Tab 9.

ARCO's current cleanup plan, for which it seeks contribution from CEPCO, is designed to stabilize the tailings ponds and prevent surface water runoff of pollutants from the mining tailings. 1996 Voluntary Cleanup Plan Application for the Argentine Tailings Site at 2-3, 2-12 through 2-13, Appendix, Tab 15. These are the exact environmental liabilities identified in the 1979 CDM Report, the report prepared for ARCO to identify environmental liabilities in anticipation of purchasing the Rico mine. CDM Report, Appendix, Tab 5.

For example, to stabilize the tailings ponds slopes, the 1979 CDM Report recognized that "[t]hese slopes will have to be flattened at least to an angle . . . [to prevent] erosion." The 1996 Voluntary Cleanup Plan Application plans to address the same issue by "[f]lattening of slopes on the tailings embankments susceptible to static or earthquake instability and erosion."

Also, both the 1979 CDM Report and the 1996 Voluntary Cleanup Plan Application recommend that a covering be placed on the tailings ponds to minimize water runoff. To prevent water from coming into contact with the tailings, the 1979 CDM Report recommends that "a peripheral diversion system" be constructed to channel surface water around the tailings ponds. Similarly, the 1996 Voluntary Cleanup Plan Application recommends "[g]rading to route offsite surface water (rainfall and snowmelt) around the wastes."

Finally, both the 1979 CDM Report and the 1996 Voluntary Cleanup Plan Application recognize the necessity of stabilizing and preventing erosion of Silver Creek, which is adjacent to the tailings pond. *Compare* 1996 Voluntary Cleanup Plan Application for the Argentine Tailings Site at 4-2 through 4-3, *and* 1979 CDM Report. ARCO's corporate representative admitted, and its own internal documents confirm, that ARCO intended to assume all environmental liabilities identified in the 1979 CDM Report, which the above comparison shows to be the same environmental liabilities that ARCO currently seeks to remedy through its 1996 Voluntary Cleanup Plan Application. Corporate depo at Vol. 1, pp. 70-71, Appendix, Tab 16 (ARCO's corporate representative testifies that prior to closing, Crystal communicated to ARCO its intent that paragraph 12(d) of the Closing Agreement would extend to all liabilities in the CDM report: "They [CEPCO] didn't want any more enforcement actions . . . . <u>They [CEPCO] wanted to shuck the whole bunch of what you refer to as environmental liabilities that</u>

are in that 1979 [CDM] report.") (emphasis added); *see also* Authorization for Expenditure and Summary of Justification, Appendix, Tab 8.

As further evidence of ARCO's intent, an ARCO memorandum identifying the pros and cons of purchasing the Rico mine immediately versus at a later date recognized that under either scenario ARCO would "[a]ssume $16 Million Environmental Liability." May 16, 1980 Anaconda memorandum, Appendix, Tab 6 (emphasis added). Furthermore, a March 6, 1981 Anaconda memorandum demonstrates that shortly after the purchase of the Rico mine Anaconda continued to recognize that "[a]long with the purchase came approximately $16 MM worth of environmental liabilities." *See* March 6, 1981 Anaconda Copper Company interoffice memorandum regarding background information on the Rico, Colorado Project, Appendix, Tab 14.

ARCO's internal documents justifying the purchase of the Rico mine demonstrate conclusively that ARCO intended to assume full responsibility for environmental liabilities. Assumption of liability was anticipated and intended, as evidenced by ARCO's capital commitment in excess of twenty million dollars, $15.4 million of which was set aside to cover "assumption" of environmental liabilities. Allocation of cleanup costs to ARCO is not a harsh result in this case. ARCO expected it and intended it.

CONCLUSION

Based on the clear and unambiguous contract between CEPCO and ARCO, which expressed the parties' true intent, ARCO assumed all environmental liabilities that are the subject of this lawsuit. Extrinsic evidence, if considered, confirms that ARCO agreed to assume the

environmental liabilities for which it now seeks reimbursement from CEPCO. Therefore, there is no genuine issue to be tried— and CEPCO is entitled to summary judgment.

FULBRIGHT & JAWORSKI L.L.P.

By: Osborne J. Dykes, III by Albert Hawk, III with permission

Osborne J. Dykes, III, T.A.
Texas State Bar No. 06325500
Zack A. Clement
Texas State Bar No. 04361550
Eva M. Fromm
Texas State Bar No. 07486750
Rebecca J. Cole
Texas State Bar No. 04546400
Edward Clark Lewis
Texas State Bar No. 00786058
1301 McKinney, Suite 5100
Houston, Texas 77010-3095
Telephone: (713) 651-5151
Telecopy: (713) 651-5246

COOK, YANCEY, KING & GALLOWAY
A Professional Law Corporation

By: _____
Albert M. Hand, Jr.
Louisiana State Bar No. 6497
James R. Jeter
Louisiana State Bar No. 7260
Bernard S. Johnson
Louisiana State Bar No. 7280
1700 Commercial National Tower
333 Texas Street, P. O. Box 22260
Shreveport, Louisiana 71120-2260
Telephone: (318) 221-6277
Telecopy: (318) 227-7850

ATTORNEYS FOR PLAINTIFFS,
CRYSTAL OIL COMPANY AND CRYSTAL EXPLORATION AND PRODUCTION COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that in compliance with the Federal Rules of Civil Procedure, on this 30th day of July, 1996, a copy of the above and foregoing has been served on counsel for Defendant, Atlantic Richfield Company, by placing a copy of same in the United States mail, properly addressed and with adequate postage affixed thereon to:

1. M. W. Michael Adams
   Blanchard, Walker, O'Quin & Roberts
   P. O. Box 1126
   Shreveport, Louisiana 71163-1126

2. Mr. Roger L. Freeman
   Davis Graham & Stubbs, L.L.C.
   370 Seventeenth Street, Suite 4700
   Denver, Colorado 80202

3. Mr. Lary D. Milner
   Senior Counsel, ARCO
   Legal Department
   555 Seventh Street
   Denver, Colorado 80202

Albert M. Hand, Jr.